

3 November 1947

Colonel Frank E. Fraser,
Office of the Adjutant General,
State of Arizona Military Department,
747 West Van Buren Street,
Phoenix, Arizona.

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ARIZONA ATTORNEY GENERAL

Dear Colonel Fraser:

We acknowledge receipt of your letter of 13 October 1947 in respect to students from without the state of Arizona attending colleges and universities within the State of Arizona, enlisting in the National Guard of Arizona.

We direct your attention to the following quotation from our opinion of 8 April 1946 written to the Honorable Dan E. Garvey, Secretary of State of the State of Arizona:

"The use of the term 'residence in Section 55-201, A.C.A. 1939, in respect to voting, appears to be a use in which 'residence' and 'domicile' are considered synonymous terms. See 28 C.J.S., p. 7, par. 2 (b).

There are three types of domicile: (1) domicile of origin, which is generally the place where one is born; (2) domicile by operation of law, which is that domicile attributed by the law to a person independently of his own intention or actual residence; and (3) domicile of choice, which is defined as the place which a person has elected and chosen for himself to displace his previous domicile and which has for its true basis or foundation the intention of the person. It is with this last domicile that we are primarily concerned. Domicile of choice is entirely a question of residence and intention, or as it is frequently put, of factum and animus. To constitute such a domicile or to effect a change of domicile, there must appear both an actual residence in a particular location and an intention to remain there or to make it one's home. Applying this rule it is seen that at some time there must occur a union of residence and intention, and that the moment that union occurs the person has acquired a new domicile, and if his intention remains unchanged the person is domiciled at that location from then on. So therefore, we may generally say that if a soldier, ex-serviceman, or any other person

is within the State of Arizona under such conditions as permit him to become a resident of the State, as distinguished from domiciled therein, and during that period forms the intention to reside primarily in Arizona and make it his home, from that moment on that person is domiciled in Arizona and is a resident of Arizona within the meaning of Section 55-201, A.C.A. 1939, and one year thereafter becomes eligible to vote.

In that connection we may say that the location of a man's wife or family is not necessarily a fact that is a conclusive determination of his domicile. See In re Daggett, 174 N.E. 641; 75 A.L.R. 1251.

There is a qualification to this rule. It is universally held that the fact that one is on military duty does not preclude him from establishing his residence where he is stationed, if he so desires, BUT he must have some period of residence off the military reservation. The cases without exception hold that there must be some period of time in which a person in military service resides on territory other than the military reservation where he is assigned. See Notes, 143 A.L.R. 1411; 149 A.L.R. 1471; 150 A.L.R. 1468; 151 A.L.R. 1468.

The manner in which residence could be obtained off the reservation admits of too many fact-situations for us to attempt illustration and each case must be resolved by an application of the principles enunciated above to what actually is the case in the situation under consideration."

It is our opinion that the terms of residence as set forth in our quoted opinion above apply to Paragraph 6A of the National Guard Regulations. We cannot agree with your construction that the term "residence" as used in the National Guard Regulation does not mean legal residence. As was said in McGrath v. Stevenson, (Wash.), 77 Pac. (2d) 608:

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"* * * Each of the terms 'reside', 'residing', 'resident' and 'residence' is elastic. To interpret the sense in which such a term is used, we should look to the object or purpose of the statute in which the term is employed.
* * * * *".

In our opinion the term "residence", as used in the National Guard Regulations, has reference to a person who has taken up his domicile within the State of Arizona and therefore would have no application to a student who is within this state solely for the purpose of attending school. However, as it was said in our opinion, if the student came into the State of Arizona and at some time while therein formed the intention of making Arizona his permanent place of domicile, then he becomes a resident within the meaning of the regulation. It would appear to us that a student who is not a genuine resident of Arizona would, in many instances, not be available to the National Guard and at the completion of his scholastic career would return to his state of "residence".

We agree with your statement that this type of man is a desirable guardsman but we do not believe that has any bearing on the case.

It is therefore our opinion that students at the university and state colleges of Arizona who are not actually domiciled within the State of Arizona are not residents within the meaning of the National Guard Regulation even if they state to the contrary on their enlistment record.

Very truly yours,

JOHN L. SULLIVAN,
Attorney General

JOHN W. ROOD,
Chief Assistant
Attorney General